IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

THURSDAY, THE 29TH NOVEMBER 2007 / 8TH AGRAHAYANA 1929

RSA.No. 931 of 2007()

AS.94/2003 of SUB COURT, KASARAGOD
OS.13/2002 of PRL.MUNSIFF, KASARAGOD
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: APPELLANT/APPELLANT/PLAINTIFF

MAMMU, S/O.LATE SEEDIKUNHI,
NADUBALAPIL HOUSE, KUDALA,
KANNUR VILLAGE, KASARGODE.

BY ADV. SRI.V.V.ASOKAN
SMT.S.AMINA

RESPONDENTS: RESPONDENT/DEFENDANT

MOHAMMAD @ S.A. AMOO HAJI,
SIDDIBAIL, KANNUR, KASARGODE.

BY

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 29/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

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R.S.A. NO. 931 OF 2007

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Dated this the 29th day of November, 2007

JUDGMENT

Plaintiff in O.S.13/2002 on the file of Munsiff Court, Kasaragod is the appellant. Defendant is the respondent. Appellant instituted the suit seeking a decree for declaration of title and possession and also for injunction. Plaint A property is a portion of R.S.No.162/3 which appellant claims to be in his possession since last several years. It is 39 cents in extent. R.S.No.162/3 was assigned to the appellant by Special Tahsildar for land assignment. It is alleged that there is a public road situated in R.S.No.162/1 and the properties comprised in R.S.No.161/1 and 161/2 along with other properties were the leasehold properties of Seedikunhi, father of appellant who obtained lease from Aisabi and on the death of Seedikunhi, leasehold right devolved on the legal representatives including the

appellant and plaint A schedule property along with the remaining portion measuring 62 cents in R.S.No.162/3 was assigned to the respondent 22 years back by the Government, he obtained possession only the balance extent and 39 cents continued to be the possession of appellant. It was contended that appellant planted casurina plants and other plants in plaint A schedule property and in R.S.162/4 the adjacent property in the possession of the appellant and his sisters. R.S.162/4 measuring 1 acre was assigned to the appellant by the Government and since that property is touching plaint A schedule property, no separate boundary separating plaint A schedule property and R.S.No.161/1, 161/2 and 162/4 was constructed and plaint A schedule property forms a compact block with R.S.No.161/1, 161/2, and 162/4 and 18 years back respondent attempted to take forcible possession of plaint A schedule property which was prevented by appellant and respondent constructed a compound wall excluding plaint A schedule property

which is the western portion of R.S.No.162/3 and even if respondent or anybody else has any right over that portion it is lost by adverse possession and limitation and appellant has perfected his title by adverse possession. It was also contended that respondent has no manner of right over the property and therefore appellant is entitled to a decree for declaration of title and permanent prohibitory injunction restraining respondent from trespassing into plaint schedule property. Respondent resisted the suit contending that appellant is not in possession of the disputed plaint A schedule property. It was contended that plaint A schedule property has not been in the possession of appellant and he has not perfected title by adverse possession as alleged. It was further contended that plaint A schedule property along with 17 cents in all 62 cents in R.S.No.162/3 was assigned in his favour by the Tahsildar, Kasaragod as per D.R.1255/66-67 and R.S.No.162/4 was assigned in favour of the

respondent and respondent has been in possession and enjoyment of 62 cents in R.S.No.162/3 and out of the said property 20 cents was sold to his brother which is the eastern portion of 62 cents under Ext.B6 assignment deed and his brother Abdulrahiman was in possession of the said property and after the said sale deed Abdulrahiman constructed a compound wall excluding plaint A schedule property and the improvements in plaint A schedule property was effected not by appellant but by respondent. Appellant and his sister had filed O.S.136/2000 against the respondent for permanent prohibitory injunction in respect of the property in R.S.No.162/4, but the description of the property was wrongly shown including plaint A schedule property and Commissioner submitted report showing that there is a mud ridge and trench in between plaint A schedule property and R.S.162/4 and appellant is not entitled to the decree sought for.

2. Learned Munsiff on the evidence of PW1 and

2, DW1 and Exts.B1 to B6 and C1 to C3 finding that appellant did not establish his title or possession and dismissed the suit. Appellant challenged the judgment before Sub Court, Kasaragod in A.S.94/2003. Learned Sub Judge on reappreciation of evidence confirmed the findings of learned Munsiff and dismissed the appeal. It is challenged in the appeal.

3. Learned counsel appearing for appellant heard.

4. The argument of the learned counsel is that Ext.C1 and C2 reports would etablish that the improvements in the plaint A schedule property is similar in age to the improvements in the admitted other properties of the appellant and it establish indication that plaint A schedule property is being enjoyed as part of the remaining property of the appellant as a compact block and even if respondent has any right or title to the property, it is lost by adverse possession and limitation. It was also argued that courts below did not

properly appreciate the evidence and on appreciation of evidence it should have been found that appellant has been in possession of the property for the last more than 20 years and existence of the compound wall noted by the Commissioner separating plaint A schedule property is an indication to prove that respondent is in possession of only the remaining property excluding plaint A schedule property and therefore a decree should have been granted.

5. On hearing the learned counsel, I do not find any substantial question of law involved in the appeal.

6. Appellant is claiming title to the plaint schedule property by adverse possession. To establish adverse possession, appellant is relying on his evidence as PW1 and evidence of PW2 and the observation of the Commissioner in Exts.C1 and C2 reports. Learned Munsiff on appreciating the evidence found that appellant did not establish his possession of the plaint schedule property much

less adverse possession and held that he has not perfected title by adverse possession. Learned Sub Judge on reappreciation of evidence, confirmed the findings of learned Munsiff. Attempt of appellant is to get the evidence reappreciated and findings of this court substituted to the findings of courts below. Reliance was placed on Exts.C1 and C2 reports especially the age of casurina plants found in the disputed property as well as the compound wall. Case of the respondent is that plaint schedule proeprty including the property assigned by him in favour of his brother under Ext.B6, was obtained under Ext.B2 proceedings of the Government and when under Ext.B6 20 cents was assigned to the brother, he constructed a compound wall separating plaint A schedule property. Eventhough appellant had claimed that he has been in possession of the property, appellant admitted that government assigned the property to respondent 22 years prior to the institution of the suit. No evidence was adduced to prove that appellant was in

possession of the property much less with the requisite animus. On going through the judgment, I cannot agree with the argument of learned counsel that the appreciation of evidence was perverse. In such circumstance, when it was found that appellant did not establish his title and possession and, which is a finding of fact it cannot be interfered in exercise of the powers of this court under section 100 of Code of Civil Procedure.

Appeal is dismissed in limine.

M.SASIDHARAN NAMBIAR
JUDGE

tpl/-

M.SASIDHARAN NAMBIAR, J.

W.P.(C).NO. /06

JUDGMENT

SEPTEMBER,2006